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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

COUNTY OF SANTA CRUZ,

Plaintiff and Respondent,

v.

ROY KAYLOR,

Defendant and Appellant.

H043821

(Santa Cruz County
Super. Ct. No. CV168369)

The County of Santa Cruz (County) brought an action for abatement of a nuisance against defendant Roy Kaylor after he had accumulated vehicles, other personal property, and garbage on his approximately 150-acre property in Boulder Creek.¹ Following trial, the court entered judgment in favor of the County and appointed a series of receivers to abate the nuisance. Kaylor appeals from the order denying his motion to replace the current receiver William James Rahal.² We conclude that the trial court did not abuse its discretion and affirm the order.

¹ We have taken judicial notice of our prior opinion in *County of Santa Cruz v. Kaylor* (Dec. 17, 2014, H040243) [nonpub. opn.]. (Evid. Code, § 452, subd. (a).)

² Relying on *Edwards v. Western Land & Power Co.* (1915) 27 Cal.App. 724 (*Edwards*), Kaylor argues that this court should strike Rahal's brief and decline to entertain oral argument from his counsel. In *Edwards*, the California Supreme Court held that a receiver is not entitled to appeal from an order discharging him. (*Id.* at p. 728.) *Edwards* is distinguishable from the present case because Rahal has not appealed from

I. Statement of the Case

In 2006, the County notified Kaylor that he had violated several provisions of the Santa Cruz County Code regarding the use of his property. Kaylor did not bring his property into compliance with the County Code. In 2010, the County filed a complaint for abatement of a nuisance, injunctive relief, civil penalties, attorney's fees, and costs. Kaylor filed an amended answer in which he denied the allegations and stated that he had hauled 72 pickup truck loads of trash and 10 large dump trucks of trash to the dump and filled over 300 large trash bags. He also asserted that he had evicted approximately 250 people, mostly methamphetamine addicts, from the property over a 26-year period.

In 2012, the County filed a motion for appointment of a receiver in the event that it prevailed at trial. The County also attached supporting documentation in which it nominated Athena Honore, Kaylor's daughter, as receiver.

Following the trial in April 2012, the court found in favor of the County, issued an injunction, and awarded code enforcement fees, attorney's fees, and costs to the County. The trial court also ordered a complete cleanup of the property by April 30, 2013.

The following month, the trial court appointed Honore as the receiver and charged her with bringing the property into compliance with the County Code. The trial court also permanently enjoined Kaylor from taking any action that would interfere with the receiver's duties and warned him that any violation of the injunction could subject him to further court action.

In September 2012, Honore informed the trial court that she had been prevented from making significant progress on the cleanup of the property. She requested

any order. He has filed a respondent's brief in which he has defended the propriety of his conduct. Kaylor has cited no authority for the proposition that a receiver is precluded from filing a respondent's brief in an appeal that accuses him of failing to perform his duties in a proper and timely manner. Accordingly, we reject this argument.

additional time to complete the cleanup and the appointment of a successor receiver. The trial court continued the matter for two weeks.

Kaylor nominated Shandra Brown as a successor receiver. Brown submitted a declaration in which she stated that she had contacted various entities to sell the items on Kaylor's property and assembled a team to assist her in the cleanup. The trial court appointed John Richardson, who had been nominated by the County. Within weeks, Richardson withdrew due to a conflict of interest.

The parties submitted additional nominations. Kaylor proposed that either there be no receiver and he would continue to work with Brown, or that Rahal be appointed receiver. Rahal, a licensed general contractor and realtor, had "experience in salvage timber operations and in reclaiming burl which are likely to be major sources of revenue off the property as well as with removal and scrapping of vehicles from distressed properties."

The trial court relieved Honore of her duties and appointed Rahal as the receiver in December 2012. The trial court charged Rahal "with the abatement of a public nuisance on the subject property . . . and with bringing [it] into compliance with the County Code." He was granted all of the powers in Code of Civil Procedure section 568 and the power to perform all work necessary to cause the property to conform to the law, including the power to employ people, contract for services, and sell personal property. The trial court set a benchmark of February 1, 2013, for cleanup of the first portion of the property, known as the Teddy Roosevelt area or "Area One." Rahal was also ordered to, "as a matter of first choice, contract with Shandra Brown to continue the work she is performing to remove vehicles and other items from the property."

The trial court ordered that the cleanup of Area One be completed by March 1, 2013. As of mid-March 2013, the County found that Area One had been

adequately cleaned up with the exception of a few items. The trial court then ordered “Area Two” to be cleaned up within six months, as requested by Kaylor.

In August 2013, the County inspected the property and reported that Area Two was 65 to 70 percent cleaned up. On September 13, 2013, Rahal reported that the cleanup of Area Two had not been completed and the trial court ordered that the cleanup of this area be completed by September 27, 2013. The trial court also ordered Kaylor to remove any items he wanted to keep, and authorized the County to remove all remaining items, if necessary.

On September 26, 2013, Kaylor filed a status conference statement in which he informed the trial court that he had transferred the items he was interested in keeping into three mobile storage units and two buses. However, he had not found a permanent home for the storage units or buses and he needed to repair one of the buses. The following day, the trial court held a case management conference. The trial court ordered Kaylor to provide Rahal with a list of the items that he wished to retain by September 30, 2013, and to remove these items by October 4, 2013. The trial court also ordered that Rahal would then have exclusive authority to dispose of any remaining items by mid-December 2013. On October 3, 2013, the trial court issued its written order.

On October 10, 2013, Kaylor filed a notice of appeal and claimed that the trial court abused its discretion in ordering him to remove his personal possessions from the property. In mid-November 2013, the trial court directed Rahal to take no action while the appeal was pending. In mid-December 2014, this court issued its opinion and affirmed the order.

In April 2015, the trial court vacated the order staying the case. About a month later, the County visited Kaylor’s property and discovered items that it had not previously been aware of and which needed to be removed to bring the property in compliance with the County Code. These items included approximately 25 to 30 vehicles, a small

structure, and various car and bicycle parts. Rahal attempted to carry out his duties as receiver, but he faced difficulties due to Kaylor's lack of cooperation and funding constraints.

In January 2016, Rahal filed a motion for the trial court to approve his retention of counsel. In March 2016, the trial court found that Rahal had "established that the retention of legal counsel [was] necessary in order for him to carry out his duties as the Court Appointed Receiver" and granted the motion. With the assistance of counsel, Rahal then developed a rehabilitation plan and obtained bids from multiple contractors to assist in cleaning up the property.

In mid-April 2016, Rahal moved for an order approving the proposed rehabilitation plan and authorizing the issuance of receiver's certificates of indebtedness to fund the cleanup. According to Rahal, the funding process established by the original appointment order was untenable, since the personal property, which included "discarded vehicles and other debris in varying stages of decay," on the receivership property would not produce a significant amount of capital. Thus, Rahal sought receiver's certificates that would create liens on the receivership property to cover receivership costs.

About two weeks later, Kaylor filed opposition to this motion and argued that Rahal had failed to show the need for issuance of receiver's certificates. He also submitted Brown's declaration in which she summarized the efforts to clean up the property. Brown also stated that Kaylor had used "a good portion of funds" from logging to pay laborers and rent equipment.

Kaylor also filed a motion to remove Rahal as receiver and appoint Steven Travis as his replacement. The motion was supported by declarations from his counsel, Brown, and Travis. According to Kaylor's counsel, Rahal had done little or nothing to clean up the property after the stay was lifted. According to Brown, "while [she] was doing all the work with [her] family and [Kaylor's] friends, Mr. Rahal would come to the land for a

few short hours once or twice a month” and had not been to the property in the prior year. She also provided details of her efforts in cleaning up the property. She further claimed that Rahal falsely accused her of moving vehicles to a third site. Travis’s declaration stated that he is a licensed architect and is familiar with timbering practices, cleanup, demolition, and rehabilitation of natural landscapes. Travis was confident that the property could be brought into compliance without a receiver’s certificate within six months.

Rahal filed opposition to Kaylor’s motion. He submitted a declaration in which he stated that Kaylor and his associates, including Brown, were uncooperative. As he explained in his declaration accompanying the rehabilitation plan, their “truckload-by-truckload approach . . . had proven to be untenable and very slow.” Rahal stated that he had reviewed Brown’s and Kaylor’s declarations and asserted that their statements were “exaggerated or simply untrue.” He noted that his initial appointment provided that he attempt to contract with Brown for the rehabilitation of the property. Thus, he did not attend each day Brown and her associates were working on the site because it would have incurred unnecessary fees. Rahal noted that Brown and her associates, many of whom “appeared to be squatters” on the property, often did not begin working until late in the day. They were uncooperative with his orders, removed items from the truck and placed them back on the ground, and moved vehicles to other areas of the property as well as Nevada, thereby preventing their sale to pay for rehabilitation of the property. Though Rahal had been given exclusive control of the property after the stay was lifted in April 2015, Kaylor and Brown continued to enter the property and remove vehicles. In his view, the services of a professional contractor were necessary to rehabilitate the property in a timely manner. Rahal also pointed out that the proceeds from the sale of personal property and recycling had not raised “any notable capital” and Brown would retain these

funds to pay her own expenses. Her expense receipts always covered the exact amount of the proceeds so there were never funds to cover other cleanup efforts.

Following a hearing, the trial court issued an order approving Rahal's rehabilitation plan and authorizing issuance of receiver's certificates. The trial court found that the "proposed rehabilitation plan is the most efficient and equitable manner to obtain the timely rehabilitation of the Subject Property to bring it into compliance with the Judgment in this action."³

Kaylor then filed a reply memorandum in support of his motion to replace Rahal as receiver. Kaylor also objected to various statements in Rahal's declaration and submitted a declaration by Brown. Brown stated that difficulties between Rahal and her arose after she was "uncooperative with his advances." Rahal then "abandoned his appointment" and had done nothing to clean up the property since the stay was lifted. She asserted that Rahal refused to be involved in the logging plan. According to Brown, she and her sons had "done an excellent job so far" and Rahal "was seeking compensation for a job that [they had] mostly finished."

The trial court held a hearing on Kaylor's motion to replace Rahal as the receiver. Following argument, the trial court denied the motion. The trial court stated: "The record in this case is that Mr. Kaylor has repeatedly frustrated the receiver's ability to do his job. [¶] Originally the cleanup was going to be funded by the sale of the vehicles. However, those vehicles were disposed of by Mr. Kaylor before Mr. Rahal could sell them for value. [¶] Subsequently, there was a possibility of funding the cleanup through harvesting the property, but Mr. Kaylor managed to have the timber on the property harvested and kept that money to himself. [¶] So allowing Mr. Kaylor yet another attempt at cleanup would be an effort in futility."

³ In May 2016, Kaylor filed a notice of appeal in case No. H043591 in which he challenged this order. In March 2017, this court granted Rahal's motion to dismiss the appeal.

II. Discussion

Kaylor contends that the trial court erred when it denied his motion to remove and replace Rahal as receiver. He contends that Rahal neglected his duties and Travis was a qualified candidate.

We review an order denying a motion to remove and replace a receiver under the abuse of discretion standard. (*Sly v. Superior Court* (1925) 71 Cal.App. 290, 294.) Under this standard, “[o]ur view of the facts must be in the light most favorable to the order and we must refrain from exercising our judgment retrospectively.” (*Cal-American Income Property Fund VII v. Brown Development Corp.* (1982) 138 Cal.App.3d 268, 274.) “An abuse of discretion occurs ‘where, considering all the relevant circumstances, the court has exceeded the bounds of reason or it can fairly be said that no judge would reasonably make the same order under the same circumstances.’” (*In re Marriage of Olson* (1993) 14 Cal.App.4th 1, 7.)

Here, the County’s inspections in March and August 2013 established that significant portions of the property had been cleaned up under Rahal’s management. Though Kaylor argues that the bulk of the rehabilitation of the property was undertaken by Brown, not Rahal, he has overlooked that the trial court had ordered Rahal to contract as a matter of first choice with Brown to continue her work of removing vehicles and other items from the property. Despite her noncooperation, Rahal attempted to work with her. Rahal continued with these efforts to clean up the property until Kaylor refused to cooperate. The trial court ordered Kaylor on September 13, September 27, and October 3, 2013, to remove his personal items from the property. He failed to do so and appealed the trial court’s order, thereby staying the case from November 2013 to April 2015. Kaylor cannot fault Rahal for failing to clean up the property when it was Kaylor’s conduct which prevented him from doing so.

Moreover, Kaylor continued to interfere with Rahal's efforts after the stay was lifted. Kaylor removed vehicles from the property in violation of the trial court's order, deprived the receivership of necessary funding, unlawfully entered the property, and proceeded with an untenable approach to compliance. Despite the lack of cooperation, Rahal took steps to bring the property into compliance. He retained counsel who specialized in receiverships, obtained court-ordered funding through receivership certificates, obtained bids from contractors for the cleanup of the property, and submitted a viable rehabilitation plan. Thus, the trial court did not abuse its discretion when it denied Kaylor's motion to replace Rahal.⁴

Kaylor argues, however, that the trial court considered "misappropriation of logging funds" and "seems to have, perhaps out of frustration, found a reason to deny the motion that was not supported by the record."

In denying the motion, the trial court stated that "there was a possibility of funding the cleanup through harvesting the property, but Mr. Kaylor managed to have the timber on the property harvested and kept that money to himself." In his opposition to the motion for receiver's rehabilitation plan and issuance of receiver's certificates, Kaylor argued that the receiver's certificates were unnecessary because Rahal's estimates for the costs of cleanup were inaccurate. Kaylor also submitted Brown's declaration in which she first discussed Kaylor's logging efforts and how the funds were spent. Following a hearing in May 2016, the trial court granted Rahal's motion.

"[I]t is a fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment." (*Jameson v. Desta* (2018) 5 Cal.5th 594,

⁴ Rahal argues that replacing him as receiver would derail the sale and cleanup of the property. Since the possible sale of the property was not before the trial court when it denied Kaylor's motion, we will not consider this argument.

608-609.) Thus, an appellant must provide an adequate record for this court to review his or her arguments. (*Lincoln Fountain Villas Homeowners Assn. v. State Farm Fire & Casualty Ins. Co.* (2006) 136 Cal.App.4th 999, 1003, fn. 1.)

Here, Kaylor has failed to include the reporter's transcript from the May 2016 hearing during which the various options other than the issuance of receiver's certificates would have been considered. Since Kaylor has not included this transcript, he has failed to carry his burden on appeal. Accordingly, we reject his argument.

III. Disposition

The order is affirmed.

Mihara, J.

WE CONCUR:

Elia, Acting P. J.

Bamattre-Manoukian, J.